

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JANE DOE, Individually and) CIVIL NO. CV11-00550 DAE-KSC
Next Friend of JOHN DOE, a)
minor; RICHARD ROE 1,)
Individually and on behalf) Honolulu, Hawaii
of JANE ROE 1, a minor;) January 27, 2012
RICHARD ROE 2 AND) 9:37 a.m.
MRS. RICHARD ROE 2,)
Individually and on behalf)
of JANE ROE 2, a minor;) MOTION FOR LEAVE TO
all Individually and on) INTERVENE ON BEHALF OF
behalf of a class of) PLAINTIFF
persons similarly situated,)

Plaintiff,

vs.

STATE OF HAWAII, SCOTT
O'NEAL, SYDNEY DICKERSON,
AND JOHN DOES 1-10,
ENTITIES 1-10,

Defendants.

STATE OF HAWAII,

Third-Party
Plaintiff,

vs.

PETER POES 1-100; PATRICIA
POES 1-100, AND PARENT POES
1-100,

Third-Party
Defendants.

SCOTT O'NEAL,

Third-Party
Plaintiff,

1)
2 vs.)
3)
4 ROXSANNE TOMITA,)
5)
6 Third-Party)
7 Defendants.)
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**TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEVIN S.C. CHANG
UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

For the Plaintiff: GLENN H. UESUGI, ESQ.
841 Bishop Street, Suite 2201
Honolulu, Hawaii 96813

For the Third-Party ERIC A. SEITZ, ESQ.
Roxsanne Tomita and 820 Mililani Street, Suite 714
Plaintiff Honolulu, Hawaii 96813
Intervenor:

For the Defendant JOHN F. MOLAY, ESQ.
State of Hawaii: Deputy Attorney General
Department of the Attorney General
State of Hawaii
Civil Rights Litigation
425 Queen Street
Honolulu, Hawaii 96813

For the Defendant RANDALL K. SCHMITT, ESQ.
Scott O'Neal: JORDON JUN KIMURA, ESQ.
McCorriston Miller
Mukai MacKinnon, LLP
Five Waterfront Plaza
Fourth Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

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For the Defendant
Sydney Dickerson:

C. BRYAN FITZGERALD, ESQ.
Deputy Attorney General
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

PER DIEM COURT REPORTER:

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Proceedings recorded by digital audio sound recording,
transcript produced by computer-aided transcription (CAT).

1 FRIDAY, JANUARY 27, 2012 9:37 O'CLOCK A.M.

2 THE CLERK: United States District Court for the
3 District of Hawaii, with the Honorable Kevin S.C. Chang
4 presiding, is now in session.

5 Civil No. 11-550 DAE-KSC, Jane Doe, et al. versus
6 State of Hawaii, et al. This is a hearing on motions for
7 leave to intervene on behalf of plaintiffs.

8 May I have your appearances.

9 MR. UESUGI: Good morning, Your Honor. Glenn
10 Uesugi on behalf of Plaintiffs.

11 THE COURT: Morning.

12 MR. SEITZ: Morning, Judge. Eric Seitz on behalf
13 of Third-Party Defendant Tomita and the parties who are
14 seeking by motion today to intervene.

15 THE COURT: Morning.

16 MR. FITZGERALD: Morning, Your Honor. Bryan
17 Fitzgerald appearing on behalf of Sydney Dickerson in her
18 individual capacity.

19 THE COURT: Yes, morning.

20 MR. MOLAY: Morning, Your Honor. Deputy Attorney
21 General John Molay for the State.

22 MR. SCHMITT: Morning, Your Honor. Randall
23 Schmitt and Jordon Kimura appearing on behalf of Defendant
24 Scott O'Neal.

25 THE COURT: Morning.

1 Mr. Seitz.

2 MR. SEITZ: Judge, I've been informed by Mr. Molay
3 that with respect to the issue of the Office of Public
4 Guardian, that they are withdrawing their objection in
5 that regard. And he can confirm that if you wish.

6 THE COURT: Noted.

7 MR. SEITZ: Okay. Other than that objection,
8 which I was prepared to address and suggest some
9 alternatives, there is no real basis for any objection to
10 this motion. All of the clients who we seek to have
11 intervene are members of the putative class and they would
12 be entitled to bring claims in their own right.

13 There are no conflicts of interest. We have
14 established that. And in any event, as I said in my
15 declaration, the potential for conflicts has been
16 explained to all the clients and they've all signed
17 written waivers indicating that they understand that they
18 have a right to their own individual counsel, or that they
19 would prefer to have me represent them.

20 Accordingly, there is no conflict of interest
21 whatsoever. There's no basis, I would believe, for
22 opposing this motion and we would request it be granted.

23 THE COURT: Mr. Molay?

24 MR. MOLAY: State has nothing to add to its
25 written papers.

1 THE COURT: Counsel?

2 MR. FITZGERALD: Yeah, nothing to add. I think
3 it's -- the conflict's pretty obvious.

4 THE COURT: Well, but even if there is a potential
5 or actual conflict, is this the time to address that
6 conflict, given the record that we would have here?

7 MR. FITZGERALD: I would say the sooner, the
8 better, Your Honor. Any delay could only prejudice
9 parties, counting my client.

10 MR. SEITZ: I don't know what the conflict is, to
11 be honest with you.

12 MR. FITZGERALD: I can outline it, Your Honor.

13 THE COURT: Sure, go ahead.

14 MR. FITZGERALD: Ms. Tomita is a guidance
15 counselor or was a guidance counselor at the school,
16 charged with the duty of what a guidance counselor does,
17 including dealing with the sexual assaults and allegations
18 of sexual assaults.

19 So, to represent one charged with the
20 responsibility of dealing with these issues as well as
21 those that were victimized is on its face as plain a
22 conflict as you can get.

23 MR. SEITZ: Ms. Tomita is the person who reported
24 it. So she's not a defendant in this case. The
25 plaintiffs haven't sued her. She's been brought in as a

1 third-party defendant, in our view, frivolously. But it's
2 premature to address that.

3 So if the conflict allegedly is between the kids
4 who were assaulted and Ms. Tomita, there is no conflict.
5 She basically reported what she heard to the authorities,
6 and she will testify accordingly. But that has no bearing
7 on the claims of the kids themselves. They're not suing
8 her. They wouldn't sue her. And there's no indication
9 that there's any conflict therefore at all.

10 MR. FITZGERALD: Well, it's precisely that sort of
11 collusion that we're worried about, Judge. If you've got
12 one lawyer saying, well, don't sue the woman who has a
13 statutory reporting requirement. Did Ms. Tomita contact
14 the police every time she heard of these assaults? Did
15 she follow DOE protocol every time she learned of these
16 assaults? Did she ask the right questions of the right
17 students and have a proper response to these reports?
18 These are all serious questions, not potential conflicts
19 that are waivable but actual conflicts which are not
20 waivable.

21 MR. SEITZ: Bring them on. You know, my client
22 has not been sued by the state. So, for this attorney to
23 represent -- and he represents the principal who did fail
24 to do exactly what he's saying. There's no question about
25 that.

1 My client did notify the police. My client did
2 notify the authorities. So, you know, bring it on. But
3 there is no conflict that I'm aware of. He basically is
4 arguing theoretically, and he knows nothing of what he
5 speaks.

6 MR. FITZGERALD: Well, I think I don't have to
7 know too much when the pleadings in the case name
8 Ms. Tomita already. I think that's an actual conflict,
9 Your Honor.

10 THE COURT: Mr. Schmitt, Mr. Kimura?

11 MR. SCHMITT: We have nothing in addition, Your
12 Honor.

13 THE COURT: Any last comment?

14 MR. SEITZ: No last comment.

15 THE COURT: The Court, having reviewed the written
16 submissions, having reviewed the comments and consider the
17 comments this morning, will grant this motion to
18 intervene, finding that the proposed intervenors have met
19 the factors required for intervention as of right, which
20 is -- or which are that, first, the motion is timely;
21 second, the proposed intervenors have a significantly
22 protectable interest. The disposition of the action may
23 impair or impede the proposed intervenors' ability to
24 protect that interest. And lastly, the proposed
25 intervenors' interest are not adequately represented by

1 the other parties to this action.

2 The Court further finds that intervention will not
3 unduly delay or prejudice the adjudication of the original
4 parties' rights and will, in fact, in this case promote
5 judicial economy.

6 The proposed intervenors are further entitled,
7 alternatively, to permissive intervention because there is
8 an independent basis for jurisdiction, the motion is
9 timely, and there are common issues of law or fact which
10 exist between the proposed intervenors' claims and the
11 main action.

12 The Court, in granting this motion, makes no
13 ruling or determination with regards to any of the alleged
14 argument or assertions with regards to any possible
15 conflict of interest that may exist in this case; that if
16 there is a dispute with regard to that matter, the Court
17 should be provided with a complete record and an
18 appropriate motion to address any such conflict.

19 You prepare the order, Mr. Seitz.

20 MR. SEITZ: I will. Thank you.

21 MR. FITZGERALD: Thank you very much.

22 THE COURT: We'll be in recess.

23 MR. SEITZ: Thank you, Your Honor.

24 (Recorded proceedings concluded at 9:44 a.m.)
25

COURT TRANSCRIBER'S CERTIFICATE

I, Adrienne Ige Kurasaki, Per Diem Court Reporter,
United States District Court, District of Hawaii, do
hereby certify that the foregoing is a full, true, and
complete transcript from the official electronic sound
recording of proceedings in the above-entitled matter.

DATED at Honolulu, Hawaii, March 3, 2012.

/s/ Adrienne Ige Kurasaki
Adrienne Ige Kurasaki, CSR 388
Registered Professional Reporter